IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3975 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

DAWOODBHAI I GHANCHI C/O MS MANSURI, ADVOCATE

Appearance:

1. Special Civil Application No. 3975 of 2001
MR HARDIK C RAWAL for Petitioner No. 1
MR NEHAL R JOSHI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner corporation and Mr.N.R.Joshi, learned advocate for the respondent workman. In this petition, the

petitioner has challenged the award made by the labour court, Baroda in Reference No. 980 of 1993 dated 16th October, 2000 whereunder, the labour court has set aside the order of dismissal and has granted reinstatement with continuity of service, with full back wages for the intervening period. In this petition, by order dated 13th June, 2001, rule was issued and ad.interim relief in terms of para 7(C) has been granted. Learned advocate Mr. Raval appearing for the petitioner has made a statement before this court that the respondent workman has been reinstated in service of the corporation on 6th July, 2001. The statement made by Mr. Raval has not been disputed by Mr. Joshi who is appearing for the workman.

The respondent workman was working with the corporation as Art A Mechanical Examiner and he joined the service as helper on 13th October, 1970. He remained absent withuot prior permission and, therefore, was served with the chargesheet and was dismissed by the corporation after holding departmental inquiry, on 19th December, 1992. That order of dismissal was challenged by the respondent workman before the labour court, Baroda by way of raising industrial dispute under the provisions of the Industrial Disputes Act, 1947 and reference was made by the Assistant Commissioner of Labour on 24th September, 1993. Before the labour court, legality, validity and propriety of the departmental inquiry was challenged by the workman by raising preliminary point to that effect. In support of such preliminary point, the respondent was not examined and on behalf of the petitioner, one witness was examined at Exh. 42 who was cross examined by the advocate for the workman before the labour court. Thereafter, the labour court has decided the said preliminary point and has come to the conclusion that the departmental inquiry initiated by the petitioner against the workman is vitiated and is contrary to the principles of natural justice vide order at Exh. 60. That order on preliminary point was challenged by the petitioner before this Court by filing special civil application no. 12901 of 2000 wherein this court, by order dated 20th December, 2000, has rejected the said petition at the admission stage.

Thereafter, the petitioner has not led any oral evidence before the labour court for proving the misconduct against the respondent workman though opportunity was given by the labour court to the petitioner for leading the evidence to prove the alleged misconduct. Not only that, even the respondent was also not examined before the labour court after the decision

of the labour court on the preliminary point as regards legality and validity of the departmental inquiry. Thereafter, the labour court has considered the merits of the matter to the effect that once the inquiry has been vitiated and the petitioner has not led any oral evidence to prove misconduct, then, the order of dismissal is required to be set aside and consequently the respondent is entitled for reinstatement with continuity of service with full back wages. This award made by the labour court is under challenge before this Court.

During the course of hearing, learned advocate Mr. Raval for the petitioner has submitted that once the inquiry has been held to have been vitiated, charge is required to be proved by the petitioner by leading evidence before the labour court but the petitioner has not led any oral evidence before the labour court. He has, however, submitted that while making award of reinstatement in view of this situation, it is the duty of the labour court to consider the question of back wages and to examine whether the respondent is entitled to back wages or not and to what extent, he is entitled for the relief of back wages during the interim period. According to him, before the labour court, no evidence was led by the respondent workman for proving that he has not been gainfully employed in any establishment during the intervening period. He has submitted that that the respondent has not stepped in the witness box for proving that he has remained unemployed during the intervening period. According to him, in view of this position, there was no burden on the employer for proving otherwise that the workman has been gainfully employed elsewhere and, thus, the labour court has committed grave error in awarding reinstatement with full back wages for the intervening period and the petitioner which is a public body has been saddled with such heavy burden of back wages in absence of the evidence. According to him, this is the basic error committed by the labour court and, therefore, interference of this court is required.

As against that, learned advocate Mr. Joshi appearing for the respondent workman has submitted that the respondent workman had remained absent for some period and, therefore, he was served with a charge sheet and, thereafter, departmental inquiry was initiated against him and ultimately, he was dismissed from service by order dated 19th December, 1992. According to him, before the labour court, legality, validity and propriety of the departmental inquiry was challenged by the workman and preliminary point to that effect was raised and was decided by the labour court in favour of the workman.

According to him, in view of this, it was the duty of the petitioner corporation to lead evidence before the labour court for proving the alleged misconduct. However, the petitioner has failed to led any evidence before the labour court for proving the misconduct and in view of this, the labour court was right in awarding reinstatement with continuity of service and full back wages for the intervening period and, therefore, this Court should not interfere with the award in question.

I have considered the submissions made by the learned advocates for the parties. The question is that the labour court has decided preliminary point in favour of the workman wherein challenge made by the workman to the legality and validity of the departmental inquiry has been upheld by the labour court by holding that the inquiry against the workman has been vitiated. In view of this, it was the duty of the petitioner corporation to led evidence before the labour court for proving the alleged misconduct against the respondent workman. However, subsequently, the petitioner has led no evidence before the labour court for proving the alleged misconduct against the respondent workman and as a result thereof, award of reinstatement with continuity of service and full back wages has been made by the labour court. However, according to the opinion of this court, the labour court, after coming to the conclusion that the respondent workman is entitled for reinstatement with continuity of service, ought to have examined as to whether the workman is entitled for the back wages and to what extent he is entitled for the relief of back wages in light of the evidence produced before it.

I have perused the original record which was called by this Court. From the record, it appears that the workman has raised the preliminary point and has passed purshis to the effect that the validity of the inquiry has been challenged by him and that the workman is not intending to led any evidence. This was submitted by the workman by purshis at Exh. 14 on 3rd February, 1999. From the record, it appears that since the petitioner has not led any evidence for proving the charge levelled against the workman, the labour court has closed his right to lead evidence which was subsequently opened on an application moved by the petitioner corporation by order dated 30th June, 1999. Thereafter, the petitioner has examined one witness on its behalf at Exh. 42 namely Mohamad Hushen A.R. That witness was cross examined by the advocate for the respondent workman. Thereafter,the petitioner has closed his evidence on 23rd February, 2000. Thereafter, no evidence

was led by the respondent workman and then, written arguments were submitted by both the parties.Thus, from the record, it is clear that the respondent workman was not examined before the labour court and has not deposed anything on oath before the labour court by stepping in the witness box. Thus, from the record, it appears that there was no evidence from the side of the respondent workman whether he remained unemployed or not during the intervening period. It is a settled law that the workman would become entitled for the full back wages if he has remained unemployed during the interim period and has not been gainfully employed elsewhere. These facts have not come on the record of this petition because there was no evidence led by the respondent workman in that regard. Even the Corporation has also produced no evidence to prove the facts otherwise that the respondent was gainfully employed or has been engaged elsewhere in some other establishment. So, in respect of the gainful employment, there was no evidence led either by the petitioner or by the respondent workman. In such a situation, it was the duty of the labour court to see whether it would be justified in granting 100 per cent back wages or not. This aspect has not at all been considered by the labour court while passing the award in question. Another aspect ought to have examined by the labour court while considering the aspect of back wages was that the respondent workman was dismissed from duty by order dated 19th December, 1992. Industrial Dispute was raised by the workman after the period of about nine months and thereafter, the matter remained pending before the labour court for about seven years or so. There was no fault on the part of the petitioner for such delay. The labour court ought to have kept in mind this aspect while considering the aspect of back wages. The another aspect required to be examined was that the petitioner is a public body which cannot be saddled with the liability of back wages for such a long period for no fault on its part. Apparently, these aspects were not considered by the labour court while considering the question of back wages.

Recently, the apex court has considered this aspect in case of Management of M.C.D. v. Prem Chand Gupta reported in AIR 2000 SC 454. In para 18 and 19 of the said decision, the apex court has observed as under :

"18. We have now reached the stage for considering appropriate relief to be granted in the light of our findings on point no. 2. Once it is held that termination of the respondent workman on 29.4.1988 was null and void being

violative of section 25-F of the I.D. Act, the logical consequence would be that he would be entitled to be reinstated in service with continuity and in normal course would be entitled to full back wages. However, in our view on the peculiar facts of this case, it will not be appropriate to grant full back wages to the respondent workman even though he will be entitled to be reinstated in service of the appellant Corporation with continuity and all further consequential benefits on that score, save and except the grant of full back wages, as indicated hereinbelow.

19. The reasons for non granting full back wages from the date of his termination of 29.4.1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29.4.1966 and after 33 years and more it is being set aside. To saddle the appellant corporation and its exchequer, which is meant for public benefit, with full back wages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamoring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant Corporation, being a public body, with full back wages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant corporation. It is true that the respondent workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP Stage itself while granting leave stayed reinstatement order on 17.11.1997. two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant corporation a public body with the burden of entire full back

wages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back wages. But keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back wages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order.

1. The impugned order of the Division Bench of the High Court in so far as it holds that the termination order of the respondent workman dated 29.4.1966 was violative of rule 5 of the relevant rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the respondent workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent workman on 29.4.1966 to be violative of section 25-F of the I.D. Act.

3. So far as back wages are concerned, the impugned order of the High Court is modified by directing that the respondent workman will be entitled to get 50 per cent of back wages from the date of his termination i.e. from 29.4.1966 till his actual reinstatement in service of the appellant corporation with continuity of service. The respondent wormkan will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant Corporation being treated to have been in continuous service of the appellant Corporation from 29.4.1966 all through out till reinstatement. The

> appellant Corporation shall reinstate the respondent workman with continuity of service within eight weeks from today and will also pay 50 per cent back wages as directed hereinabove within that period. The appellant corporation will grant all other consequential benefits to the respondent workman in light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

Therefore, in the facts and circumstances of the present case and also in view of the principles laid down by the apex court in the aforesaid decision, considering the fact that the inquiry held against the workman concerned has been held to have been vitiated and no fresh evidence was led by the petitioner for proving the charge levelled against the workman before the labour court, and the respondent workman has also not proved unemployment. Therefore, according to the opinion of this court, the respondent is not entitled to full back wages. Another aspect required to be kept in mind is that the dispute was raised by the workman after about nine months and thereafter the matter remained pending before the labour court for about seven years or so. Admittedly, the petitioner corporation cannot be held responsible for such delay. Another aspect required to be kept in mind is that the petitioner is a public body and considering all these aspects of the matter, according to my opinion, it would be just and proper if the workman is awarded the back wages at the rate of 50 per cent for the intervenig period instead of 100 per cent as has been awarded by the labour court under the award in question. To that extent, the award in question is required to be modified by this court.

Accordingly, this petition is partly allowed. The award made by the labour court in reference no. 980 of 1993 dated 16th October, 2000 is modified in respect of back wages to the extent that instead of full back wages, now the workman is entitled for 50 per cent of the back wages for the intervening period. It is clarified that the award of reinstatement with continuity of service has not been disturbed by this court.

At this stage, learned advocate Mr.N.R. Joshi appearing for the respondent workman has submitted that the award was made by the labour court on 16th October, 2000 whereas the respondent has been reinstated in service on 6th July, 2001 and, therefore, respondent is entitled for full wages for this period. Mr. Joshi is

right in making such submission that the petitioner has not been reinstated within one month from the date of publication of the award in question. Therefore, it is directed to the petitioner to pay full wages to the respondent workman with effect from 16th October, 2000 till 6th July, 2001 within one month from the date of receipt of copy of this order. Petitioner is also directed to pay to the respondent workman 50 per cent of the back wages for the intervening period with all consequential benefits within three months from the date of receipt of copy of this order.

Rule is made absolute in terms indicated hereinabove with no order as to costs.

7.3.2002. (H.K. Rathod,J.)

Vyas